

REMARKS

Claims 16-28 are pending in this present Application. Claim 16 is amended with this Response. The Examiner's rejections will now be respectfully addressed in turn.

Examiner's Response to Applicant's Arguments

The first portion of the Examiner's Response to Applicant's Arguments section of the Office Action addresses Applicant's arguments filed on July 15, 2008 regarding a previously issued 35 U.S.C. §112, first paragraph rejection. Though the Examiner does not explicitly reissue this rejection, Applicant respectfully traverses the Examiner's reasoning behind reconsidering Applicant's July 15 2008 arguments.

Applicant respectfully notes the Examiner's statement that "it is the position of the Examiner that if the "magazine discharge arrangement" and "output compartment" are novel structures as claimed to the confectionary dispensing art then such novelties *would require further novelties* to the "activation arrangement."'" Applicant specifically traverses the Examiner's allegation that one set of novel components in a device "requires" another set of components in the same device to be novel. In fact, finding novelty to be required of Applicant's activation arrangement (i.e. grip 101 and mechanical couplings) because the arrangement activates novel features (i.e. magazine discharge arrangement and output compartment) is analogous to finding novelty to be required of a car ignition system that is coupled to a novel engine arrangement because the ignition system activates a novel feature. Obviously, in the case of the car ignition system, such a finding would be improper in that it would suffice for an Applicant to state that the automotive art includes well-known couplings that would allow a turning of an ignition to result in a starting of an engine. Applicant respectfully asserts that mechanical couplings that are well-known in the art of confectionary dispensers should be afforded the same finding and analysis.

Accordingly, since 35 U.S.C. §112, first paragraph does not require that one set of novel components in a device be activated by another set of novel components in the same

device, Applicant respectfully submits that the Examiner's reasoning in the first portion of the Examiner's Response to Applicant's Arguments section is improper.

Claim Rejections Under 35 U.S.C. §102(b) and 103(a)

Claims 16-28 are rejected as being anticipated by, under 35 U.S.C. 102(b), or obvious over, under 35 U.S.C. 103(a), United States Patent No. 4,109,825 to Weitzman. Applicant respectfully traverses this rejection.

Applicant notes that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

For an obviousness rejection to be proper, the Examiner must meet the burden of establishing that all elements of the invention are disclosed in the prior art and that the prior art relied upon, coupled with knowledge generally available in the art at the time of the invention, must contain some suggestion or incentive that would have motivated the skilled artisan to modify a reference or combined references. *In re Fine*, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988); *In Re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970); *Amgen v. Chugai Pharmaceuticals Co.*, 927 U.S.P.Q.2d, 1016, 1023 (Fed. Cir. 1996).

Applicant's claim 16 has been amended to recite, *inter alia*,

"said magazine discharge arrangement comprising:

at least two output compartments upwardly adjacent of said at least one dispenser outlet; and

at least one confectionery article fitting compartment upwardly adjacent of said at least two output compartments,

said magazine outlet being disposed upwardly adjacent of said at least one

confectionery article fitting compartment.”

Applicant first notes that Weitzman does not teach a magazine outlet that is disposed upwardly adjacent of at least one confectionery article fitting compartment. On the contrary, the Examiner equates openings 64 and 54 with Applicant’s recited magazine outlet, and the bottom of compartments 74 with Applicant’s recited fitting compartment. Since, referring to Figures 2, Weitzman clearly teaches the openings 54 and 64 to be disposed below the compartment 74, Weitzman does not teach a magazine outlet (i.e. openings 54 and 64) that is disposed upwardly adjacent of at least one confectionery article-fitting compartment (i.e. compartment 74), as is now required by Applicant’s amended claims.

In addition, as the Examiner seems to interpret Weitzman to teach a single rotatable output compartment defined in the space between the cover plate and carrier plate 42, Applicant respectfully asserts that Weitzman also does not teach “at least two output compartments being adapted for performing a rotating movement,” as is now required by Applicant’s amended claim 16.

For at least the above reasons, Applicant respectfully submits Weitzman does not teach every element of Applicant’s claim 1, or claims 2-16 that depend therefrom. For at least this reason, Weitzman neither anticipates Applicant’s claims, nor render Applicant’s claims to be obvious.

In addition, as further evidence of non-obviousness, the positioning of components and number of rotating output compartments recited in Applicant’s claims provides an advantage over the device of Weitzman in that more effective tampering prevention is provided thereby. In addition, the multiple output compartments allow Applicant’s dispenser, in an exemplary embodiment thereof, to potentially hold confectionary pieces of different sizes and geometries.

Conclusion

All of the objections and rejections are herein overcome. In view of the foregoing, it is respectfully submitted that the instant application is in condition for allowance. No new matter is added by way of the present Amendments and Remarks, as support is found throughout the original filed specification, claims and drawings. Prompt issuance of Notice of Allowance is respectfully requested.

The Examiner is invited to contact Applicant's attorney at the below listed phone number regarding this response or otherwise concerning the present application.

Applicant hereby petitions for any extension of time necessary under 37 C.F.R. 1.136(a) or 1.136(b) for entry and consideration of the present Reply.

If there are any charges due with respect to this Amendment or otherwise, please charge them to Deposit Account No. 06-1130 maintained by Applicant's attorneys.

Respectfully submitted,

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